

ORIGINAL DOCKET FILE COPY ORIGINAL

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING
EUGENE M. LAWSON, JR.
SUSAN A. MARSHALL*
HARRY C. MARTIN
GEORGE PETRUTSAS
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

August 2, 1999

RECEIVED
AUG 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D. P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

EDWARD F. KENEHAN
(1960-1978)

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS*
EDWARD S. O'NEILL*
JOHN JOSEPH SMITH

WRITER'S DIRECT

BY HAND DELIVERY

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

Re: MM Docket No. 99-215

RM-9337

Mason, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of Jayson D. Fritz and Janice M. Fritz, are an original and four copies of their "Comments" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump

Counsel for Jayson D. Fritz and Janice M. Fritz

AGC:mah

Enclosures

No. of Copies rec'd 0+4
List ABCDE

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-215
Table of Allotments, FM Broadcast Stations.)	RM-9337
(Mason, Texas))	

Directed to: Chief, Allocations Branch

COMMENTS

Jayson D. Fritz and Janice M. Fritz ("Fritz"), by their attorneys, hereby submit their Comments in response to the *Notice of Proposed Rule Making*, DA 99-1142, released June 11, 1999 ("*NPRM*"), in the above-captioned proceeding. With respect thereto, the following is stated:

1. In the *NPRM*, the Commission has proposed to allot Channel 239C2 to Mason, Texas, and to allow the petitioner in this proceeding, BK Radio, to amend its pending application for Channel 249C2 at Mason (File No. BPH-960823MF) to specify operation on the new channel without loss of cut-off protection. Fritz also has pending an application for Channel 249C2 at Mason (File No. BPH-960826MS), which is mutually exclusive with that of both BK Radio and one additional party, Foxcomm, Inc. (File No. BPH-960826MH). The *NPRM* further notes that, in order to provide cut-off protection to BK Radio, additional channels must be found to accommodate both the two remaining applicants in the proceeding and any party which might express an interest in a channel at Mason. The *NPRM* points to Channel 273C2 as a channel available for use at Mason.

2. Fritz supports the proposed allotment of Channel 239C2, as well as the allotment of Channel 273C2, to Mason only on the condition that it not be required to amend its pending application. Fritz believes that the station proposed in that application can best maximize its service to the public on Channel 249C2. While the Commission traditionally has considered FM channels of the same class to be equivalent, the fact remains that the choice of channel limits the locations at which a station may place its transmitter to maximize its service area. Fritz further questions the wisdom of allotting so many channels to such a small community. Mason had a 1990 Census population of only 2,022. In addition to the channel allotments proposed herein, Channel 224A was allotted to Mason in MM Docket 97-244. *Report and Order*, DA 99-1119, released June 11, 1999. Accordingly, it is especially important to be able to maximize the proposed Mason station's facilities in order to be able to survive economically. Therefore, Fritz opposes the allotment plan set forth in the *NPRM* if Fritz would be required to amend the pending application to specify a new channel.

3. Fritz further notes that it was not served with a copy of BK Radio's Petition for Rule Making in this proceeding, nor was it mailed a copy of the *NPRM*, despite the potential effect on the pending applications. Thus, Fritz did not learn of the instant proceeding until after the *NPRM* was released. In addition, neither BK Radio nor Commission staff consulted with or notified Fritz prior to removing the Mason application from the list of applications to participate in the upcoming auction. *See, Public Notice - Closed Broadcast Auction*, DA 99-1346, released July 9, 1999.

4. If the Commission does allot Channel 239C2 to Mason and allow BK Radio to amend its application to specify operation on this channel with cut-off protection, then fundamental

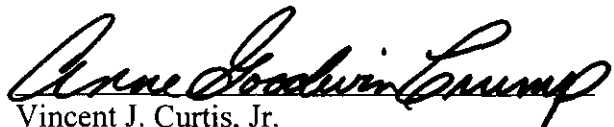
fairness to the remaining two mutually exclusive applicants requires that the Commission at the same time also allot Channel 273C2 to Mason in order to provide certainty that all applicants will be provided with a channel. Furthermore, under these circumstances, the Commission also should direct which applicant is to amend its application to specify a new channel. As stated above, Fritz requests that the Commission specify that the Fritz application will retain Channel 249C2. Without such an order, the remaining two mutually exclusive applicants will be left in limbo, with the prospect of a protracted delay in resolution of the matter and grant of construction permits.

WHEREFORE, the premises considered, Fritz respectfully requests that the Commission either allot Channels 239C2 and 273C2 to Mason and issue an order specifying that the Fritz application shall retain Channel 249C2 or deny BK Radio's petition for rule making and allot no additional channels to Mason.

Respectfully submitted,

JAYSON D. FRITZ AND JANICE M. FRITZ

By:



Vincent J. Curtis, Jr.
Anne Goodwin Crump

Their Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

August 2, 1999

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Comments" were sent this 2nd day of August, 1999, by United States mail, postage prepaid, to the following:

Lee J. Peltzman, Esquire
Shainis & Peltzman, Chartered
1901 L Street, N.W., Suite 290
Washington, DC 20036-3506
Counsel for BK Radio

John Joseph McVeigh, Esquire
12101 Blue Paper Trail
Columbia, MD 21044-2787
Counsel for Foxcomm, Inc.


Mary A. Haller